

October 21, 2009

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Re: Technical Assistance Advisement 09A-053
Sales and Use Tax – Indoor Plant Maintenance Services
XXX (“Taxpayer”)
Taxpayer’s Identification Number: XXX
Section 212.0506, Florida Statutes (F.S.)
Rule 12A-1.105, Florida Administrative Code (F.A.C.)

Dear XXX:

This response is in reply to your two letters to the Department dated May 26, 2009, and September 2, 2009, requesting the Department’s issuance of a Technical Assistance Advisement (“TAA”) pursuant to Section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding the referenced matter. An examination of your petition has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for issuance of a TAA.

Issue

The issue is whether an interior plant maintenance service is a service warranty subject to sales tax

Stated Facts and Requested Advisement

Taxpayer sells and leases indoor plants and provides indoor plant maintenance services. Taxpayer offers two basic types of indoor plant maintenance services. The two types are guaranteed maintenance and non-guaranteed maintenance. Guaranteed maintenance includes pruning, rotating, watering, cleaning, fertilizing, and plant replacement. Non-guaranteed maintenance includes all services of guaranteed maintenance except plant replacement. In some cases, Taxpayer will offer a combination of the two types of maintenance services.

You state that your company charges sales tax on all its maintenance services. Recently, however, one of your long standing customers has refused to pay you sales tax on its non-guaranteed maintenance service contract and has asked for a refund of the tax paid on prior maintenance charges. Consequently, you have asked for a ruling on the tax treatment of your indoor plant maintenance services.

Applicable Authority

Section 212.0506, F.S., provides in pertinent part the following:

212.0506 Taxation of Service Warranties

(1) It is the intent of the Legislature that every person is exercising a taxable privilege who engages in this state in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty.

(2) For exercising such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable at the rate of 6 percent on the total consideration received or to be received by any person for issuing and delivering any service warranty.

(3) For purposes of this section, “service warranty” means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property. The term “service warranty” does not include contracts or agreements to repair, maintain, or replace tangible personal property if such property when sold at retail in this state would not be subject to the tax imposed by this chapter, nor does it include such contracts or agreements covering tangible personal property which becomes a part of real property.

Rule 12A-1.105, F.A.C., provides in pertinent part the following:

12A-1.105 Service Warranties

(1)(a) Every person who solicits, offers, provides, enters into, issues, or delivers any service warranty, or who receives, on behalf of another person, any consideration from a service warranty holder is exercising a taxable privilege and shall register as a dealer with the Department of Revenue before such person may engage in or conduct business in this state....

(b)1. The term “service warranty” means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property, whether or not the contract provides for the furnishing of parts....

* * *

(2)(a) The tax shall be due at the rate of 6 percent on the total consideration received or to be received by any person for the privilege of engaging in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty.

(b) The tax shall be due and payable by the person receiving consideration from the service warranty agreement holder at the time such consideration is received. The person receiving the consideration from the service warranty agreement holder shall collect the tax and remit it to the Department at the times and in the manner provided in Rule 12A-1.056, F.A.C.

(c) Any dealer registered with the Department who performs repairs or maintenance of tangible personal property indemnified under a service warranty may purchase repair parts, materials, and labor incorporated into the repair or maintenance of indemnified property tax-exempt for purposes of resale. The repair dealer is required to issue a copy of the dealer's Annual Resale Certificate

Discussion and Response

As provided in Section 212.0506, F.S., and 12A-1.105, F.A.C., every person is exercising a taxable privilege who engages in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty in Florida. The term "service warranty" means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property. The term "service warranty" does not include contracts or agreements to repair, maintain, or replace tangible personal property that would not be subject to sales tax when sold at retail in Florida.

The question which remains is whether plant maintenance services are taxable. Since there is no definition of the term "maintenance" in statute, it is necessary to look to principles of statutory construction for guidance. Words of common usage when used in a statute should be given their plain ordinary meaning. Pederson v. Green, 105 So.2d, 1 (Fla. 1958). The word "maintenance" is defined in Merriam-Webster's Collegiate Dictionary, Tenth Edition, as "the upkeep of property or equipment." Clearly, pruning, rotating, watering, cleaning, and fertilizing indoor plants are all activities that are involved in maintaining such indoor plants.

In the instant case, Taxpayer is in the business of selling indoor plants. Indoor plants are tangible personal property and are subject to sales tax when sold at retail in Florida. Taxpayer is also in the business of maintaining and in some cases replacing indoor plants. Contracts or agreements Taxpayer enters into for maintaining and replacing indoor plants are service warranties subject to sales tax. Therefore, Taxpayer's contracts or agreements for guaranteed maintenance and non-guaranteed maintenance for indoor plants are subject to tax. Taxpayer is correct in charging its customer sales tax for the non-guaranteed indoor plant maintenance service. Taxpayer's customer should not be given a refund of the taxes previously paid on non-guaranteed indoor plant maintenance services.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar

transactions to a different treatment than expressed in this response.

You are further advised that this response, your request, and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses, and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Richard R. Parsons
Tax Law Specialist
Technical Assistance & Dispute Resolution
850-922-4838

Record ID: 68018